

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

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|---|---|------------------------------|
| MCAIRLAIDS, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. 7:13cv193 |
| v. |) | |
| |) | |
| KIMBERLY-CLARK CORPORATION, <u>et al.</u> , |) | By: Michael F. Urbanski |
| |) | United States District Judge |
| Defendants. |) | |

ORDER

The court held a Markman hearing in this matter on May 29 and 30, 2014. At that hearing, counsel for McAirloads submitted five supplemental authorities in support of its claim construction arguments. The court gave the parties an opportunity to brief these five authorities following the hearing, and both have submitted supplemental briefs.

Kimberly-Clark now moves to strike McAirloads' supplemental brief because, in addition to the five cases McAirloads presented at the Markman hearing, it discusses a sixth case—Nautilus, Inc. v. Biosig Instruments, Inc., 134 S. Ct. 2120 (2014), which was issued by the United States Supreme Court on June 2, 2014, three days after the Markman hearing concluded. Kimberly-Clark argues that McAirloads' discussion of Nautilus violates the court's explicit direction that the parties were to brief only the five supplemental authorities submitted at the hearing.¹

Kimberly-Clark's motion to strike (Dkt. # 121) is **DENIED**.² Kimberly-Clark may file an additional brief discussing the Nautilus opinion and its application to this case within fourteen days.

¹ The court notes that Kimberly-Clark filed a notice of relevant authority on June 2, 2014, bringing the Nautilus opinion to the court's attention as a case addressing the standard for indefiniteness under the patent laws. (See Dkt. # 111.) Kimberly-Clark's position in the instant motion appears to be that, while it submitted Nautilus to the court as relevant authority, it has not had an opportunity to brief the case. The court will remedy that issue.

² Kimberly-Clark's motion for fees and costs in preparing the motion is also **DENIED**.

**NO FURTHER BRIEFING BY EITHER PARTY IS NEEDED ON ANY ISSUE
CONCERNING CLAIM CONSTRUCTION UNLESS THE COURT DIRECTS
OTHERWISE.**

It is **SO ORDERED**.

Entered: June 19, 2014

/s/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge